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IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA

10 WILBUR WADE ATCHERLEY,) No. C 04-4434 MMC (PR)

11 Petitioner,)

12 v.)

13 A. SCRIBNER,)

14 Respondent.)

**ORDER DENYING REQUEST FOR
CERTIFICATE OF APPEALABILITY;
DENYING MOTIONS FOR
APPOINTMENT OF COUNSEL AND
LEAVE TO PROCEED IN FORMA
PAUPERIS ON APPEAL**

(Docket Nos. 35, 37 & 38)


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17 On October 20, 2004, petitioner, a California prisoner proceeding pro se, filed the
18 above-titled petition for a writ of habeas corpus pursuant to 28 U.S.C. § 2254, challenging a
19 conviction obtained against him in state court. On September 16, 2008, the Court denied the
20 petition on the merits and entered judgment. On October 20, 2008, petitioner filed a notice
21 of appeal from the entry of judgment in respondent's favor, along with a request for a
22 certificate of appealability pursuant to 28 U.S.C. § 2253(c) and Federal Rule of Appellate
23 Procedure 22(b). See United States v. Asrar, 116 F.3d 1268, 1270 (9th Cir. 1997). That
24 same date, petitioner also filed a motion for appointment of counsel and for leave to proceed
25 in forma pauperis on appeal. Petitioner has not shown, however, that reasonable jurists
26 would find the Court's assessment of the constitutional claims debatable or wrong. See
27 Slack v. McDaniel, 529 U.S. 473, 484 (2000). Accordingly, petitioner's request for a
28 certificate of appealability and his motions for appointment of counsel and leave to proceed
in forma pauperis on appeal are hereby DENIED.

1 The Clerk shall forward this order, along with the case file, to the United States Court
2 of Appeals for the Ninth Circuit, from which petitioner may also seek a certificate of
3 appealability. See Asrar, 116 F.3d at 1270.

4 This order terminates Docket Nos. 35, 37 and 38.

5 IT IS SO ORDERED.

6 DATED: October 30, 2008

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MAXINE M. CHESNEY
United States District Judge